

MELVIN WOLF

IBLA 79-518

Decided September 26, 1979

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 33217.

Reversed and remanded.

1. Oil and Gas Leases: Applications: 640 Acre Rule

Under 43 CFR 3110.1-3, it is improper to reject an oil and gas lease offer filed for more than 640 acres of available land where leases subsequently issued in response to prior applications have reduced the land available to the subject application to less than 640 acres.

APPEARANCES: Melvin Wolf, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Melvin Wolf has appealed from the New Mexico State Office, Bureau of Land Management (BLM), decision dated July 6, 1979, which rejected his noncompetitive oil and gas lease offer NM 33217 in its entirety for these reasons:

In T. 4 S., R. 23 E., NMPM, lots 2, 3, 4, Sec. 31 are included in oil and gas lease NM 32310, dated August 1, 1978, and SE 1/4 SE 1/4 Sec. 31, is in oil and gas lease NM 32307 dated August 1, 1978. In T. 5 S., R. 23 E., NMPM, the N 1/2 Sec. 21 is included in oil and gas lease NM 32316, dated August 1, 1978.

To lease the remaining lands, lots 3, 4, 5, SE 1/4 NW 1/4 Sec. 6, comprising 128.03 acres would be in violation of the regulations in Title 43 CFR 3110.1-3(a) which specifically state that an offer may not be made for less than 640 acres, except where the land is surrounded by lands not available for leasing. The records show that

contiguous lands in Sec. 6 were available for leasing, therefore, the 128.03 acres were not isolated within the meaning of the regulations.

Appellant contends his offer was made for more than 640 acres of available land within a 6-mile area, and otherwise conformed to the pertinent regulation, 43 CFR 3110.1-3(a). That regulation provides, inter alia, that the lands in a noncompetitive oil and gas lease offer must be entirely within an area 6 miles square, and that no offer may be made for less than 640 acres except where the land is surrounded by lands not available for lease under the Mineral Leasing Act, 30 U.S.C. § 226(c) (1976).

Lease offer NM 33217 was filed with BLM on April 7, 1978, for 660.17 acres, described as lots 2, 3, 4, SE 1/4 SE 1/4 sec. 31, T. 4 S., R. 23 E., lots 3, 4, 5, SE 1/4 NW 1/4 sec. 6, N 1/2 sec. 21, T. 5 S., R. 23 E., New Mexico principal meridian. At the time of filing of offer NM 33217, lots 2, 3, 4 sec. 31, T. 4 S., R. 23 E., were subject to prior filed lease offer NM 32310; SE 1/4 SE 1/4 sec. 31, T. 4 S., R. 23 E., was subject to prior offer NM 32307; and N 1/2 sec. 21, T. 5 S., R. 23 E., was subject to prior offer NM 32316, each of which offers was filed with BLM on December 5, 1977. Each offer ripened into a lease, effective August 1, 1978.

Public land covered by an outstanding offer to lease for oil and gas does not render it not available for leasing within the meaning of 43 CFR 3110.1-3(a). R. S. Prows, 66 I.D. 19 (1959). Offer NM 33217, being for 660.17 acres of available land, was thus a proper offer under the regulations.

The Mineral Leasing Act provides that if an oil and gas lease is to be issued, it must be issued to the first qualified applicant therefor. 30 U.S.C. § 226(c) (1976). The prior offers, NM 32307, NM 32310, and NM 32316 were properly accepted and leases issued, thereby making the lands in conflict with offer NM 33217 unavailable for lease. Rejection of offer NM 33217 as to the lands in conflict with existing leases was correct.

[1] But it was not correct for BLM to reject offer NM 33217 as to lots 3, 4, 5, SE 1/4 NW 1/4, sec. 6, T. 5 S., R. 23 E., for the stated reason that it would be a violation of 43 CFR 3110.1-3(a). The 640 acre minimum area defined in that regulation applies only to offers, and not to leases of an area less than 640 acres where the lease devolves from an offer which was proper when filed. Furthermore, the Oil and Gas Plat for T. 5 S., R. 23 E., disclosed that the remaining lands in sec. 6 are included within oil and gas lease NM 25341 and were not available for lease when offer NM 33217 was filed.

Offer NM 33217 of appellant appears to be the first offer from a qualified applicant for lots 3, 4, 5, SE 1/4 NW 1/4, sec. 6, T. 5 S., R. 23 E., containing 168.03 acres. If this land is to be leased for oil and gas, it must be leased to appellant, all else being regular.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded to BLM for further appropriate action consistent with this decision.

Douglas E. Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Joseph W. Goss
Administrative Judge

